

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

UWAJIMAYA, INC.,)
)
 Plaintiff,) TC-MD 021096D
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's assessment of penalties for failure to file personal property tax returns for tax years 1999-2000 and 2000-2001. The parties filed cross motions for summary judgment. Oral argument was not requested.

STATEMENT OF FACTS

The parties stipulated to the following facts. Plaintiff, Uwajimaya, Inc., is a Washington corporation, operating retail grocery stores and distributing food products primarily in the Seattle, Washington area. (Stip Facts at 1.) In 1998, Plaintiff opened its first retail store in Oregon. (*Id.*) Plaintiff leased space for its business and made various tenant improvements, including the installation of fixtures, equipment and other personal property with an approximate value of \$1,394,000. (Stip Facts at 2.) Even though Plaintiff obtained various business licenses and permits, Plaintiff was unaware that it was required to file a personal property return. (Stip Facts at 3 and 4.) Plaintiff did not file personal property tax returns for tax years 1999-2000 and 2000-2001.

In December 2000, Plaintiff received a personal property tax return from Defendant for tax year 2001-2002. Plaintiff completed the form and Defendant assessed Plaintiff for tax year 2001-2002.

On June 12, 2002, Defendant notified Plaintiff that it was adding value for Plaintiff's

personal property not placed on the tax roll for tax years 1999-2000 and 2000-2001. (Ptf's Ex A.) In addition to assessing Plaintiff additional taxes, Defendant assessed a penalty in the amount of 100 percent of the tax due for each tax year. (Stip Facts at 6.) Plaintiff is limiting its appeal to the penalty assessments. (Stip Facts at 7.)

ANALYSIS

Plaintiff raises three issues in its Motion for Summary Judgment.

First, Plaintiff requests that the court "eliminate the entire penalty" for tax years 1999-2000 and 2000-2001. (Ptf's Memo in Support of Uwajimaya's Mot for Summ J (Memo) at 3.) Plaintiff alleges that the court has the authority to waive "the penalty upon a proper showing of good and sufficient cause" and Plaintiff alleges it has made a proper showing.¹ (*Id.*) As a "first-time filer in the State of Oregon" who was "unfamiliar with its obligation to file personal property tax returns" Plaintiff fulfilled its obligation to pay personal property taxes "[a]s soon as it became aware of this obligation." (*Id.*) In addition, Plaintiff states that while making a substantial investment in Oregon and employing a "substantial number of Oregon residents" it "made good faith efforts to comply with all applicable Oregon laws." (*Id.*)

Defendant added Plaintiff's personal property to the tax rolls through the omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. See ORS 311.223(4) ("the imposition of the

¹ ORS 305.422 provides: "If a penalty under ORS 308.295 or 308.296 for the failure to timely file a real, combined or personal property return as required by ORS 308.290 is the subject of an appeal to the tax court, the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause." Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

penalty may be appealed to the tax court.)² When the legislature enacted

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ORS 305.422, it gave the tax court the authority to waive the liability for all or a portion of the penalty upon a showing of “good and sufficient cause.”

Recently, this court reviewed the statutory use and legal precedent of the term “good and sufficient cause.” See *Kintz v. Washington County Assessor*, OTC-MD No 021123A (December 27, 2002), citing *Dept. of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284 (2001). The court concluded that the “great weight” of prior legal authority is “against the conclusion that lack of knowledge may be construed as good and sufficient cause.” *Id.* Plaintiff’s inability to know that it is required to file personal property tax returns does not constitute good and sufficient cause. See *Robbins v. Josephine County Assessor*, OTC-MD No 021045D (March 27, 2003) (holding that “neither generally being unaware a return is due nor failing to receive a form from Defendant constitutes good and sufficient cause.”) Further, this court concluded that the penalty provision and waiver statute are not “based on intent.” *Performance Processing Group Inc. v. Lane County Assessor*, OTC-MD No 021214C (January 24, 2003). Even though Plaintiff was diligent in meeting its obligation once it was aware of the filing requirement, the court is limited in its ability to waive the penalty to situations where there is a proper showing of good and sufficient cause. Unfortunately for Plaintiff, the court concludes that based on prior legal authority Plaintiff has not met the statutory requirement.

Second, Plaintiff requests that the court “eliminate the 1999/00 penalty” because Plaintiff “never filed a return for 1999.” (Ptf’s Memo at 4.) Plaintiff quoted the statutory

² ORS 311.223(4), which allows a taxpayer to appeal a penalty assessed under the omitted property statutes to this court, went into effect October 6, 2001. See Or Laws 201, ch 303, § 16. The law change occurred prior to the assessment at issue.

change to ORS 308.296(4) which added the following language in bold:

“After August 1, a taxpayer who files a return to which this section applies **or who fails to file a return** shall be subject to a penalty equal to 100 percent of the tax attributable to the taxable personal property of the taxpayer.”

Plaintiff concluded that “[o]nly after the foregoing amendment was enacted in 1999, expressly providing that the penalty should apply to a taxpayer ‘who fails to file a return,’ was the penalty extended to someone who never filed a return.” (*Id.*) In reaching this conclusion, Plaintiff overlooks ORS 308.296(1)(1999) which specifically states that taxpayers who fail to file are “subject to a penalty as provided in this section.”³

ORS 308.296(1) includes the penalty provisions found in **subsections**

ORS 308.296(2) - (4). The penalty percentage is based on when the taxpayer files its return. The subsequent amendment to the statutory language of ORS 308.296(4) merely reiterated ORS 308.296(1); it does not add anything that was not already stated in ORS 308.296(1). The court denies Plaintiff’s request to eliminate the penalty for tax year 1999-2000.

Third, Plaintiff requests that the court “apply the reduced 50% penalty if any penalty is enforced in this case.” (Ptf’s Memo at 5.) Plaintiff explains its position as follows:

“Simply put, the Court should interpret the enabling language [Or Laws 2001, ch 925, § 15] to preclude any taxpayer assessed a 100% penalty *prior to January 1, 2002* from claiming a *refund* based on the current reduced penalty. However, the Court should not interpret the enabling language to differentiate between taxpayers who are assessed a penalty *after January 1, 2002.*”

(Ptf’s Memo at 5.)

³ ORS 308.296(1) provides:

“Each person, firm, corporation or association required by ORS 308.290 to file a return reporting only taxable personal property, who or which **has not filed a return** within the time fixed in ORS 308.290 or as extended, shall be subject to a penalty as provided in this section. (emphasis added.)

Plaintiff's argument is based on the legislative change to ORS 308.296(4) that lowered the penalty from 100 percent of the amount of tax to 50 percent of the amount of tax. Or Laws 2001, ch 925, § 15. Plaintiff asks this court to tie the penalty provision to the date the county issued its notice to taxpayers that the value of their property previously omitted from the tax roll has been added and assessed.

Plaintiff's request is denied because it fails to recognize the due date for the filing of personal property tax returns.⁴ The change in the penalty percentage was limited to penalties imposed for the failure to file personal property tax returns on or after January of 2001. The percentage change does not apply to personal property tax returns, like Plaintiff's, due prior to January of 2001. The court cannot reduce the statutory penalty percentage from 100 to 50 percent.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied.

IT IS FURTHER DECIDED that Defendant's Cross Motion for Summary Judgment is granted.

Dated this _____ day of April, 2003.

JILL A. TANNER
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60

⁴ "The amendments to ORS 308.296 * * * apply to penalties imposed for the **failure to file a return reporting taxable personal property that is due on or after the effective date of this 2001 Act.** [January 1, 2002.]" Or Laws 2001, ch 925, § 15. (emphasis added.)

DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON APRIL 24, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 24, 2003.